FILED
NOV. 17 1886
JAMES H. MCKENNEY
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 54.

THE CITY OF NEW ORLEANS ET AL., APPELLANTS,

vs.

J. D. HOUSTON, TAX COLLECTOR, AND THE LOUISIANA STATE LOTTERY COMPANY, APPELLEES.

SUPPLEMENTAL BRIEF ON BEHALF OF APPELLANTS IN REPLY.

WALTER H. ROGERS,
J. WARD GURLEY, JR.,
For Appellants.

JUDD & DETWEILER, PRINTERS.

IN THE

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SUPPLEMENTAL BRIEF ON BEHALF OF APPELLANTS IN REPLY.

STATEMENT OF FACTS.

Under the provisions of an act of the General Assembly of the State of Louisiana in the year 1880, and known as act No. 77, an assessment was made against the stock held by shareholders in the defendant company, payable by said company for account of the shareholders.

The board of assessors acted for the State and plaintiff city, as upon their assessment-rolls was established the quantum of taxation to be levied and collected. The city, through her proper officers, proceeded to collect the tax so assessed.

The defendant company brought its action against the city, board of assessors, and attorneys, claiming that the assessment was invalid by reasons of the exemptions set out in act No. 25 of 1868, article 5, and enjoined all proceedings looking to the collection of the taxes.

The circuit court for the eastern district of Louisiana perpetuated the injunction, and decreed the imposition of assessment and tax null and void as impairing the obligations of a contract and repugnant to article 5, section 1, of act No. 25 of 1868.

II.

ASSIGNMENT OF ERROR IN SAID DECREE.

It is contended that the decree of the circuit court is erroneous in holding that said assessment and subsequent levy were in violation of a contract, as no contract protected by the Constitution of the United States had been impaired.

That it is error to hold that assessment of the shares to owners and holders of stock is an assessment against the corporation itself.

That it is error to hold that the constitution of 1879 reenacted act No. 25 of 1868, because in violation of article 30 of the same constitution, and that said article 167 of constitution of 1879 is not self-operative, and did no more than permit the further exercise of privilege by said lottery company or its present representatives after the adoption of act No. 44 of 1879, which preceded the act of the constitutional convention.

ARGUMENT IN REPLY.

I.

Lotteries are within the scope of the police power.
Stone *vs.* Mississippi, 101 U. S., p. 818.

As such the State could not designate such charters as contracts.

"All that one can get by such a charter is a suspension of certain governmental rights in his favor, subject to withdrawal at *will*. He has in legal effect nothing more than a *license* to enjoy the privilege on the terms named for the

specified time, *unless* it be *sooner abrogated* by the sovereign power of the State. *It is* a permit, good as against existing laws, but subject to future *legislative control* or withdrawal."

Id., p. 821, and cases cited.

The cases of *Lottery* vs. *Ridaux*, 23 An., 743, and *Lottery* vs. *New Orleans*, 24 An., p. 86, were decided prior to the act of the convention in 1879, and stand opposed by an unbroken line of authority in the State, viz.: 28 An., 756; 31 An., 756, 827; 27 An., 376, 646, 648; 28 An., 498, 512; 31 An., 292, 637, 519; 32 An., 1137; 35 An., 549, and confirmed in 36 An., 434, in the following language:

"The courts organized under the constitution of 1868 repeatedly decided that neither municipal nor the *State* legislation could *validly* exempt property from taxation either by *commutation* of such taxes or *in any* other manner, unless the property was *actually used for* church, school, or charitable purposes"

II.

The constitutional provision in the article 207 of 1879 is almost identical with that of 1868, article 118, the additional exemptions referring to manufactures.

The act of 1868, No. 25, had been absolutely repeated by act No. 44, of 1879, approved March 27th of that year. The convention that framed the constitution in 1879 met only in December of that year, and it cannot be contended that by a simple addition to an article granting general privileges it gave life to an act which had no existence; and, be it remembered, that at this particular time the Stone case (101 U. S.) had not been decided—a decision in that case, fixing the status of lottery charters, was only rendered on May 10th, 1880.

General power was permitted the Legislature to grant legislative charters under article 167, but no power was exercised by that convention to do more than bestow a recog-

nition upon that interest which survived the act No. 44 of 1879, and to the extent of reviving an abrogated statute was powerless. Either from design or oversight, the attempt was not made. There is no other purpose manifest, none other to be drawn out of the enabling clause, than to permit a continuance of the privileges of that person, *once enjoying corporate privileges*, under a license of forty thousand dollars, made a common requisite for all like bodies to be created in the future. A reference to the act of 1868 was merely *directory* and not self-operative.

"It is wisely settled that, where a constitutional provision is not self-operative and requires legislative action to be put in motion, laws previously in force and *not otherwise abrogated* continue in operation until the adoption of the enabling statute."

34 An., 732; 24 An., 214; 32 An., 1200; 33 An., 873; 34 An., 337; 15 Pet., 449.

Hence the supreme court of Louisiana held in 32 An., 721:

"That the intention of the convention of 1879 was clearly to repeal that portion of the act which contemplated the destruction of the corporation. * * * Article 167 formally recognized the Louisiana State lottery as an institution charted by the State, and determines the term of its existence, but without any rights of monopoly."

Chartered when and how it may be asked. Not by an abrogated statute, but by the article 167 alone, which authorized generally such charters upon the payment of a forty-thousand-dollar license, and it is as a *license* that this payment is regarded by the supreme court. (32 An., 721.)

Should the Legislature determine to appoint new companies under this article, and exact, as they are bound to do, a payment of forty thousand dollars, could they exempt from taxation? Clearly not. Every such company would be compelled to pay taxes properly assessed. The State and city under the authorities quoted would be powerless to grant

such exemption. It would be equivalent to wiping out from this instrument article 207, which declares what and only what shall be exempt.

Respectfully submitted,

WALTER H. ROGERS,
J. WARD GURLEY, JR.,
For Appellants.

119-265

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THE CITY OF NEW ORLEANS, AND OTHER PARTIES, APPELLANTS,

vs.

NEW ORLEANS STATE LOTTERY COMPANY ET AL.

JOHN A. CAMPBELL,
For Appellees.

JOHN MURPHY & CO., PRINTERS AND STATIONERS, BALTIMORE.

Supreme Court of the U. S.

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STATEMENT OF THE FACTS OF THE CONTROVERSY.

The appellee is the complainant in the suit in the Circuit Court of the United States at the City of New Orleans, and by its corporate name above stated appeared to defend rights and privileges conferred by a charter granted in 1868 by the legislature of Louisiana. Sess. Acts, No. 25, p. 24. In the fifth sub-section of the first section of that act it was required of that company that it should "pay to the State of Louisiana the sum of $40,000 per annum, which sum shall be payable quarterly, in advance, from and after the first day of January 1869, to the State Auditor, who shall deposit the same in the Treasury of the State and which shall be credited to the educational fund; and *said corporation shall be exempt from all other taxes and licenses of any kind whatever* from the State, parish or municipal authorities."

Appendix 22 1

The validity of this enactment was the subject of judicial enquiry and adjudication not long after its promulgation and in two reported cases the act was sustained by the Supreme Court as constitutional and operative, and in the last case cited, especially, in respect to taxation by the municipal government of New Orleans of its capital and effects.

Louisiana Lottery Co., *vs.* Richoux, 23 Ann., 743.
Louisiana Lottery Co., *vs.* New Orleans, 24 Ann., 86.

In the year 1879 an act was passed by the legislature to prohibit the drawing of lotteries, the sale of lottery tickets within the State and to abrogate the Act No. 25, 1868, conferring this charter upon the Louisiana Lottery Company. This company defended its authority under its charter and litigation ensued in respect to it in one of the courts within the State.

The Constitution of 1879 which was adopted at the election in December of that year in 1880 terminated that contest.

By the 167th clause of that constitution, power was granted as follows: "The General Assembly shall have authority to grant lottery charters or privileges, provided each charter or privilege shall pay not less than $40,000 per annum in money into the Treasury of the State; and provided further that all charters shall cease and expire on the first of January 1895, after which no lotteries shall be drawn within the State of Louisiana. The $40,000 per annum now provided by law to be paid by the Louisiana State Lottery Company according to the provisions of its charter granted in the year 1868 shall belong to the Charity Hospital of New Orleans, and the *charter of the company is recognized as a contract binding on the State for the period therein* specified except its *monopoly clause*, which is hereby abrogated, and all laws contrary to the provisions of this article are hereby declared null and void. Provided said company shall file a written renunciation of all its monopoly features in the office of the Secretary of State within sixty days after the ratification of this constitution." Constitution of Louisiana, Art. 167. App. 27

The company complied with the requirement specified and filed the renunciation. It is difficult to discover why any further molestation should arise after the promulgation of this constitution. None has arisen out of legislative action. The mugwumps are these fiscal officers. *These* have found an insoluble riddle which they have not been able to deal with except by exercising themselves in making an assessment of taxes, and the issue of process for a seizure and sale of the property of the company. "Make all the money thou can'st," required no suggestion from any Iago to these boards.

The chapter in the constitution relative to "Revenue and Taxation" commences with the article No. 202. Article 203 provides that "taxation shall be equal and uniform" through the State, "and all property shall be taxed in proportion to its cash value." Article 205 ordains that the power to tax corporations and corporate property shall never be surrendered nor suspended by act of the General Assembly. Article 206 authorizes the imposition of a license tax. All persons, associations of persons and corporations pursuing any trade or calling *may* be rendered liable to such a tax.

In the Article 203 above referred to, the General Assembly is directed "In order to arrive at this equality and uniformity, at its first session after the adoption of the constitution by law to provide a system of equality and uniformity in assessments based upon the relative value of property in the different portions of the State.

"The valuation put upon property for the purpose of State taxation shall be taken as the proper valuation for purposes of local taxation in every sub-division of the State."

The Act No. 77 in the acts of the first session (April, 1880) after the adoption of the constitution was framed to execute this article. This act does not direct an assessment of taxes upon the Louisiana Lottery Company specifically, but the act directs assessments and collections of taxes and licenses in respect to classes of persons and modes and subjects of property and business. These State and municipal boards conclude that this company come within the general words employed in the Act No. 77 of 1880. f 27

I.

Parties, Pleadings, Evidence, and Decree.

The bill of the complainant exhibits to the Court the charter conferred in 1868, the organization of the company and their possession of the franchises and privileges granted, the adjudications of the Supreme Court of Louisiana sustaining the validity of the grant in respect to taxation upon a suit brought by the City of New Orleans, and discloses the constitutional enactment in 1879 (Article 167) and asks for relief from the illegal action of the fiscal officers, State and municipal, as originating in erroneous and unconstitutional opinions and violating rights which have their origin in a contract with the company.

The company has performed all of its duties under the contract and has paid the charge imposed, as a compensation for their privilege and their immunity from taxation. The answers admit all of the facts, as stated of the statute law, and the performance by the plaintiff of the duties imposed by the constitution and the charter upon the complainant. The City of New Orleans was served with process, by delivering to Shakespeare Mayor and the attorneys. The answer of the city is filed. (Record, p. 9, folio 25.) The brief filed by the city attorney in this Court in this particular is erroneous. The answers deny that the tax proposed is illegal.

The Circuit Court decided that a tax upon the capital stock of the company or upon the shares of stock held by the stockholders, is contrary to the charter of the company, and that the only sum chargeable to the company, under the statutes, is $40,000 (Record, p. 12), to be paid annually, quarterly in advance.

II.

Points and Authorities in Support of the Decree.

The decisions made by the Supreme Court of the State of Louisiana have supported the charter granted in 1868.

Louisiana State Lottery Co. *vs.* New Orleans, 24 Ann., 86.

Lottery Co. *vs.* Richoux, 23 Ann., 753.
Carcass *vs.* Judge, 32 Ann., 721.

The General Assembly, in March, 1879, repealed the charter granted to the company, but this repeal was overruled by the constitution adopted during the same year, and the charter was recognized as a valid act binding upon the state as a contract, and that it should be operative until the expiration of the charter. The answers all confess that the State has received payment of the sum of $40,000 with regularity since 1868. There has been no interruption. The legislative act of 1868, for all the purposes of this discussion, was ratified and confirmed by the people in 1879. *Non est novum, ut priores leges ad posteriores trahantur. Sed et posteriores leges ad priores pertinent nisi contrariae sint.*

The section relative to lotteries contained in the constitution shows that the convention designed to maintain all of the financial conditions of the charter as they had existed for more than ten years. The convention by the section 167 exacts the payment of $40,000 annually in advance, and applies all of it to the Charity Hospital for the term of the charter.

III.

This clause is supposed, by these fiscal agents, the defendants to this bill, and who are appellants in this Court, to be dominated by the subsequent articles in the constitution which regulate the subjects of revenue and taxation.

The section (203) which determines that taxation shall be equal and uniform, and that all property shall be taxed in proportion to its value to be ascertained by law; and the succeeding section (205) which declares the power to tax corporations and corporate property shall never be surrendered nor suspended by act of the General Assembly overrule and defeat the charter, as made in the year 1868 and the constitutional recognition in 1879. The consti-

tution fixes the rule of taxation and the assessment and method of the payment, and acknowledges that the payment so made shall afford immunity "from all other taxes and licenses of any kind from State, parish, or municipal authorities." The principle of interpretation applicable to this case is, where there shall be special laws upon any matter, and a general law shall be enacted afterward upon the same matter, it must be said that the general law should suffer the restrictions and exceptions included in the special law, and that interpretation should be made to preserve the existing law although the new law should seem to be opposed to it. The reason for this exception, is to be found in the intention of the legislature.

It is presumed the legislature did not intend to abrogate the existing special law. It is not supposed to have designed to repeal it, for as much as it has not declared such a purpose. In all of the Constitutions of the State of Louisiana there is a clause of the same import, which prohibits a legislature to impair the obligation of a *contract.* Such a clause is found in Article 155 of the constitution of 1879. The acknowledgment contained in Article 167 is that the charter as acknowledged is inviolable by an act of the General Assembly. No provision of the constitution should be construed to impair or to diminish the obligation of this contract.

The jurisprudence of Louisiana conforms to what we have said relative to interpretation.

1. A particular thing conferred or provided in one part of a statute shall not be defeated or changed by general words.

Rogers *vs.* Beiller, 3 Martin, 172.

2. A particular or special law is not repealed by a subsequent general law unless the repugnancy be so strong that both cannot stand under any conditions. The old law remains in force unless a negative is declared or necessarily implied.

De Armos, 10 Mart., 172; 12 Ann., 498; Ib., 805.

General laws are not presumed to abrogate special laws unless the former are clearly contradictory. 30 Dalloz Jurisp., 213, No.

548; Chassat, Interpretation des lois, sect. 126, p. 300. The same principle is asserted by the writers of the common law, and in our jurisprudence, "General words it is established may be qualified by subsequent clauses in the same statute, but a thing given in particular shall not be told by general words. When the law descends to particulars, such more particular provision must be understood to be exceptions to any general rule laid down to the contrary, and the general rules must not be alleged in confutation of the particular provision. Conformably to this doctrine, it has been decided that where a general intention is expressed in a statute, and the act also expresses a particular intention incompatible with the general intention, the particular intention is to be considered in the nature of an *exception*.

Potter's Dwaris on Statutes, 271, 272.
Thorpe *vs.* Adams L. R., 6 C. P., 125.
Churchill *vs.* Crease, 5 Bing. 180; 38 N. Y., 103.

The act of the Legislature of 1868 (No. 25) incorporating this company has been pronounced valid by the Supreme Court, while the existing constitution had clauses which required uniformity and equality and prohibited discriminations. In the case before the Court, it is the supreme political authority of the State—the constitution-making power of the State—whose work has been ordained by the People as dominant, which has sanctioned this charter as an operative contract to be carried into execution.

No construction can be available which infringes or subtracts from the conditions of the contract. The 167th Article of the Constitution *excepts* from the operation of the section relative to revenue and taxation this corporation for the manifest cause that the Convention has assumed to act for the people, fully, and exclusively of any other political or administrative authority within the State. The terms of the immunity are that "*said corporation shall be exempt* from all OTHER taxes and licenses of any kind whatever, whether from State, parish, or municipal authorities."

IV.

The questions which arise on this record are not of a political or a police character.

The charter granted in 1868, and recognized in 1879 as an obligatory *contract*, empowered the company to appear in any court of justice, and to do any other lawful act such as any person or persons might do for their defence, interest or safety. The declarations of the Act are, that in a financial view, money would be kept in the State by cutting off expenditures abroad, and that a fund might be raised for the purposes of education and charity.

By the Article 167 of the constitution of 1879, with the consent of the appellee, the monopoly clause contained in section five was abrogated and provision was made for the addition to the number of lottery grants by the legislature. There is to be paid for such grants the sum of $40,000. The policy of the state, in respect to such legislation, is a financial policy. The aim of the legislature in allowing them is to raise the sum of $40,000, payable to the Auditor quarterly in advance, without the interposition of any publican in the collection. The Supreme Court of Louisiana have held that these grants by the legislature are contracts, and there should be no question on the subject as the constitutional convention declared them to be so.

24 La. Ann., 86.
23 Ann., 741.
Davis *vs.* Caldwell, 2 Rob., 271.
New Orleans *vs.* Louisiana State Bank, 10 Ann., 762.

There being a *contract* without any disputation, the question arises what are the terms of the contract. The contract of the company is to pay a sum of $40,000 annually, and the admissions of all of the appellants is that this has been done punctually and without interruption at any time. The company does not complain of any obstruction in the possession of the franchises, privileges,

and rights accorded in the charter. The Act of 1879, appended to the brief of the city attorney in its direct application to the company, was never executed, and that act was abandoned by the terms of the constitution to which we have referred this Court. The appellees claim that by the very terms of this *contract* immunity from ALL OTHER TAXES and LICENSES of ANY KIND WHATEVER from the State, the parish, the municipality—these being the only organisms which had a power to impose taxes, or to charge for licenses, in that State. The mode for the imposition of taxes upon corporations at the date of this charter, and prior thereto, was by means of an annual ad valorem tax of one quarter of one per cent. upon the assessed cash value upon the capital stock of all banks or corporations doing business in the State, not expressly exempted from taxation by their charters granted by the State. The property of whatever kind over and above their capital stock, was separately taxed.

Revised Statutes, Section 3232; Sub-sections 8, 9.

The statutes did not make any assessment upon the shares held in corporations. These were regarded as included as capital.

In a number of the charters of banks there was a specific sum levied in lieu of other taxes.

Municipality, 5 Rob., 151.

Citizens Bank Charter.

The question presented is what does the contribution of $40,000 quarterly in advance each year form the consideration for? What signification have the terms "Said Corporation shall be exempt from all other taxes and licenses of any kind whatever?" The answer to this question by the appellants in this cause is that the Act No. 77, passed in 1880, to provide a system of equality and uniformity, based upon the relative value of property throughout the State, does not infringe the terms of the contract, and that an assessment under this act is constitutional and proper.

That the corporation shall be exempt from all other taxes and licenses of any kind whatever would seem to imply that for this sum the corporation cannot be charged to pay any tax on its capital or upon its property or its business. The words here are as comprehensive and as explicit as the language employed in the cases known as the cases of the Ohio Banks. The banks were required to pay a specific sum calculated upon the business of the bank.

In this case there is a commutation agreed upon and this is to be in lieu of all other taxes or licenses of whatever kind. The constitution of Ohio was especially framed to defeat the immunity clause contained in the law providing for the creation of some fifty banking corporations. This court sustained the immunity conferred on those corporations.

Farrington *vs.* Tennessee, 95 U. S., 558.
Piqua Bank *vs.* Knoop, 16 H., 369.
Dodge *vs.* Wolsey, 18 H., 331.
Jefferson Bank *vs.* Shelley, 1 Black, 331.
New Haven *vs.* City Bank, 31 Conn., 106.
Phelps *vs.* F. & M. Bank, 26 Conn., 269.
New Jersey *vs.* Yard, 95 U. S. R., 104; 13 Wall., 264.

VI.

The charter under consideration has been in force since 1868 and the construction it has received during this period of time is, that the payment of the sum fixed in the charter is a full compliance with the law of taxation.

Corporations have been assessed since that date under the general law, imposing equal and uniform ad valorem taxation. No case subsequent to that cited has involved the same question.

In 1879 when the clause in the constitution was adopted, the company acceded to the offer of that section and abandoned the monopoly clause. The charter in all other particulars was not altered. The charter was recognized as a contract binding upon

the State. That contract is that because of this payment, no other taxes, nor licenses shall be required of the corporation.

We have seen that the taxation previously exacted upon private corporations was upon capital and upon property not employed in the business of the corporation. This embraced all of the taxation which the constitution allowed of or the statute imposed. The constitution if 1879 (Article 203) is in effect the same as the constitution of 1845, 1852, 1868, all provided for equality, uniformity and an ad valorem taxation by assessment. This mode of taxing corporate property was that which was generally adopted. The capital stock was represented by the shares. This collective amount represents the value of the corporate franchise property and interest employed in conducting and accomplishing the objects for which the company was organized. The entire estate of the company was taxed on this rule.

VII.

In Massachusetts the rule is to tax the corporation upon the aggregate value of the shares. "It is the aggregate value of the shares which must be taken as the value of the franchise for taxation; and it makes no difference that by reason of privileges more or less permanently attached to some shares there is a difference in the market value."

B. & L. R. R. Co. *vs.* Commonwealth, 100 Mass. Rep., 399.
Commonwealth *vs.* Gaslight Co., 12 Allen, 75.
Hamilton Co. *vs.* Mass., 6 Wall., 632; 76 Ill., 561.

Under a statute in Iowa requiring that railroad and other corporate interests should be taxable through the shares of capital stock, it is determined that during the existence of the law such mode of taxation was that which must be pursued; and that to tax any part of property, real or personal, which was servient to the franchise, as necessary for the carrying on the undertaking, was illegal; and would be equivalent to a double taxation.

City of Davenport *vs.* M. & M. R. Co., 12 Iowa, 539.
Gordon *vs.* Baltimore, 5 Gill. 231; 12 Gill. 117.
Johnson *vs.* Comm., 7 Dana, 342; 9 N. H. 423.
23 New Jersey, L., 484.

These cases assume that there is an equivalence, or ought to be, between these methods of assessment.

In fact it is stated in the cases that where the interests represented by the capital stock are taxed by means of taxing the shares, it is competent for the legislature to collect the same through the agency of the corporation. 18 Wall 206

In the case of Minot *vs.* P. W. & B. Co., this Court held that the State may lawfully tax the corporation itself as something of some value, the measure of which may be estimated by reference to the aggregate value of the capital stock; and that such is not a tax upon the individual stock nor the individual interest of the stockholder.

The power of the State is sufficient to establish any rule of taxation over property within its limits, and is subject to its control. The Constitution of Louisiana requires that taxation shall be uniform and equal, and the Constitution of the State and the United States requires that the rule adopted shall not impair the obligation of an acknowledged contract respecting property.

The appellee contends that in this instance payment has been made to the State in full for the contribution chargeable, and which the fiscal officers seek to recover by a seizure of property. This sum was made pursuant to a contract in which all other taxes of any kind were debarred. It is not a question as to which method is best for reaching corporate interests or corporate property, but the question is whether an exemption of corporate property from taxes, and all charges for any licenses to carry on their business. The relation of the shareholders to the corporation are defined in the civil code. The faculties of the corporation belong so completely to the corporate body that none of the individuals who compose it can dispose of any part of them. In this respect the thing belonging to a

body is very different from a thing which is common to individuals as respects the share which every one has in the partnership which exists between them. C. C., Art. 436. According to this rule a creditor of a corporation can not compel any of the members to pay what is due to him by the corporation; he can demand his payment of the corporation only, through their president, syndic, or attorney in fact. C. C., 437. Wherefore it becomes necessary for every corporation to appoint some of their members to whom they may entrust the direction, and under the name of president, directors or others, according to the statutes and qualities of the corporation. C. C., 438–439. Appendix 28.

The converse of these rules is that the grants of immunity and special privilege to the corporation are corporate grants and discharge the corporation, whatever of individual benefactions, or rights arise to the shareholder are realized and are ascertained in case of dividends at stated periods or in case of the dissolution of the corporation.

In this case the severance is complete and the individual property may be reduced to possession by the shareholder as owner.

This authoritative exposition of the relations of corporation and corporator in the civil code is displayed in the laws relative to taxation of corporations. The capital is taxed as capital—an aggregate. Such property of the corporation as is taxable and not regarded as capital is taxed as corporate property separately—all has been assessed and collected of the corporation as the owner. The existence of the corporation implies to employ the language of the Code "*an union* which renders common to all those who compose it, their interests, their rights and their privileges is the reason they are *considered* as *one single whole*. Hence it follows that they may possess as a corporate body an estate, and have a common treasury for the purpose of depositing their money; that they may make valid contracts; exercise the rights which belong to them; and manage their own affairs." Rev. C. C., Arts 432-433. The organization of the company under the charter; the appoint-

ment of officers with faculties of management; a separate treasury; the annual payment to the auditor of the charter tax, in discharge from all other taxes and licenses were by the very terms of the charter acts performed by the corporation as a body corporate. There is not a function to be performed under the charter by any individual shareholder. What is not included in the charter is provided for in the code. There is no office for the shareholder.

The recognition in the Constitution of 1879 corroborates the judgment of the Supreme Court of the State in sustaining the charter as a *contract*, to be supported by the judicial power of the State against the legislature or any law subsequent.

Arnaud *vs.* Arnaud, 3 La., 337.

Daquin *vs.* Coiron, Ibid., 407.

When the people destroy an existing, to create a new Constitution all powers of government under the former constitution cease, except in so far as maintained by the latter. No one has such a vested right to office as to resist the necessary consequence of an abrogation of the constitution; which was decided in Sigur *vs.* Crenshaw, 8 Ann., 401; 9 Ann., 237. Judges Buchanan and Voorhees say in the same cases: "The peaceful changes so often affected by new constitutions are not revolutionary in character. They are mere changes introduced into the administrative details of a government essentially the same. The sanction of law and the rights of persons are only so far disturbed as the new Constitution contains declarations inconsistent with particular statutes or particular rights. The Constitution of 1879 contains a 'Schedule,' in which the operation and effect of the new constitution is fully declared. Articles 257, 258.

"The rights, actions, prosecutions, claims, and contracts of individuals and corporations, and all laws in force at the time of the adoption of the constitution and not inconsistent with its terms, remain in force. Hence all that exists in any law, prior to the adoption of this constitution, is repealed as inconsistent with its terms."

VIII.

We have considered the charter with the aid of the legislature of Louisiana when it was adopted, and of the Supreme Court of the State, in determining the validity of the act.

2. We have found that under this charter an annual sum of $40,000 has been paid by the company from the 1st of January, 1869, till the date of the answers to this suit. These payments were made and were received in the fulfilment of the contract between the State and the company, conformably to it and as a satisfaction.

3. That in 1879 the subject was considered by a Convention which was appointed to form a new Constitution. That this Constitution contains a recognition of the charter (as amended by the convention,) as a *contract*, and as mutually obligatory until the time of the expiration of the charter by its terms—the first of January, 1895. These fiscal officers of the State now assert that this is a lawful company—that it is subject to taxation under the Constitution and the laws of the State. The question is, whether the State, or those charged with the administration, fulfil the Constitution and laws as applicable to the agreement of these parties as embraced in these various ordinances and laws?

The jurisprudence of Louisiana determines that between parties to a contract, its character, construction and obligatory force is derived from the laws existing at the time—that the rights vested at the time of its formation cannot be divested nor impaired, and no new conditions can be introduced without the assent of the parties. 3 La., 337; Sabatier *vs.* Creditors, 6 N. S., 589. The various constitutions of the State contain this as a fundamental law. This contract is not disputed in the answers filed for the fiscal officers. They admit the statements of fact set forth in the bill; they admit that they have assessed the taxes; that they have caused notices of seizure of property of the appellees to be served, and that a seizure

and a sale would have been made of it but for the restraining order of the Circuit Court.

They affirm that the assessment, the attempts to collect, are legal, and that they ought not to be obstructed in the performance of these acts. They conclude that the only inquiry is, whether there has been an excess in their official proceedings.

These acts have been done after the judgment of the Courts of Louisiana had been long ago pronounced, and when there had been habitual submission to the exemption granted.

No other tax has ever been paid. This tax has been punctually paid since January, 1869. The collection of a revenue by the means of licenses to individuals and to incorporated companies to draw lotteries has been common among empires and republican States in modern times and in antiquity. The habit has not been invariable in Louisiana, nor carried to any very exorbitant extent. The State of Louisiana has empowered this company to collect capital and to employ enterprise and skill about the business, and obtains an income as a charge for the functions granted. Originally, this company was vested with an exclusive privilege. This has been renounced. The sovereign power of the State, as manifested by the Convention of 1879 in ratifying the charter of 1868 as a contract, releases the case of embarrassment in ascertaining the will of the State to continue the contract operation according to its terms. The consideration of the contract is not impeachable as being contrary to the Constitution or the laws, or to the morals of the State, nor to its health. The question is as to the bargain made and whether the State is impairing the obligation. The State does not impugn the obligation for any cause. She acknowledges a contract—the contract contained in the charter. This Court has never hesitated to deal with contracts from any consideration of the quality of the consideration; nor have the other departments of the government.

This Court investigated contracts which had been made with the use of confederate money and to obtain it, to be used. The Court

recognized the fact that there was an authority adequate to issue it and to maintain its circulation. The Court supported

Delmos *vs.* Insurance Co., 14 Wall., 661 ; 3 (

Rices vs Duke 16 5-6

In making these decisions the Court disregarded t
contained in the State constitution that such contracts should not be enforced. So there had been much traffic in the persons of slaves, and mortgages and personal obligations given as the price on contracts of sale. This Court enforced the contracts after the acts abolishing slavery and the repudiation of the contract as immoral and contrary to natural obligations.

Osborne *vs.* Nicholson, 13 Wall., 654.

Boyce *vs.* Sable, 18 Wall., 546.

2 Calvo droit Inter. 174.

The loan of confederate money or the sale of slaves in one of the Northern States of the Union, would not have enforced as a legal consideration in those States or elsewhere.

The case of Santas *vs.* Illedge was that of a Brazilian who sued an Englishman, in one of the Courts at Westminster, for the non-delivery of slaves under a contract for the sale of them in Brazil, where the law of slavery prevailed. He recovered in the Court of Exchequer chamber.

Pollock on Contracts, 337.

8 C. B. N. S., 861.

Hill *vs.* Spear, 50 N. H.

So the United States recovered the value of the slaves which had been shipped aboard of the Creole, at Norfolk, to be carried to New Orleans. The slaves mutinied, obtained possession of the ship, and found support and aid from the authorities of one of the Colonies of Great Britain.

In all of the cases the laws governing the place of the contract or the duty to be performed, were referred to and the obligation or duty to be performed was estimated and enforced if practicable according to that law. I refer to these cases for the presentation to

the Court the importance of the legislation and the law of Louisiana in the determination. The subject of the contract is a creation of the State of Louisiana.

The person contesting with the State is a juridical person existing under her laws, and endowed by the State with a right to sue and to be sued, and to *appear in any Court of Justice, and to do any other lawful act, such as any person or persons might do for their own defence, interest, and safety.* These appellants do not contest the legality of this Louisiana person, nor do they complain that they are illegally impleaded. The transaction presented to this Court is so fully clothed upon with the proper vestments for Louisiana tribunals, and those tribunals empowered to adjudge cases arising therein, that I bespeak a consideration of the questions which have been presented. The monarch from whom Louisiana derives her name, a few years before the settlements made by Bienville at New Orleans promulgated a charter with a preamble not unlike that we disclose to this Court. Louis XIV declares in the year 1700: "Sa majesté ayant remarqué l'inclination naturelle de ses sujets à mettre de l'argent aux lotéries, et desirant leur procurer un moyen agréable et commode de se faire un revenue sûr et considerable pour le reste de leur vie, et même d'enricher leur famille en donnent au hasard . . . a jugé propos d'etablir à hôtel de ville de Paris une loterie royale de ten millions." From the year 1709 till the year 1824, a lottery bill was a regular portion in the programme at every session of Parliament of Great Britain, as a means of raising the revenue for the kingdom. They were voted for in the Congress of 1776, and have served for the rearing of schools, academies, and other edifices in nearly all of the states, when this charter was made. The inviolability of contracts was the principle prevalent in this Court. The Court said this principle was to be protected in whatever form it might be assailed. To what purpose enumerate the particular modes of violation when it was intended to forbid all. 4 Wh., 122, Sturgis *vs.* Crownshield. The State of Georgia caused a statute to be expunged from its records and the

original act to be publicly burnt as a malefactor; the State of Ohio, inflamed by the establishment of a cordon of banks to consume the land like locusts, notwithstanding this their contracts were all maintained in accordance with this imperative command of the Constitution of the United States.

Says Chief Justice Marshall: If under a fair construction of the constitution grants are comprehended under the name of contracts . . . . what motive for implying in words which import a general prohibition to impair the obligation of contracts, an exception in favor of the right to impair the obligation of those contracts which the State may enter.

Fletcher *vs.* Peck, 7 Cr., 164.

Chief Justice Taney furnishes a full exposition of the doctrine which his illustrious predecessor maintained with surpassing ability and fervor.

"There are undoubtedly fixed and immutable principles of justice, sound policy and public duty which no State can disregard without serious injury to the community and to the individual States who confer it, and contracts are sometimes incautiously made by States as well as individuals; and franchises, immunities and exemptions from public burdens improvidently granted.

"But whether such contracts should be made or not is exclusively for the consideration of the State. It is the exercise of an undoubted power of sovereignty which has not been surrendered by the adoption of the Constitution of the United States and over which this Court has no control. For it can never be maintained in any tribunal in this country that the people of a State in the exercise of the powers of sovereignty, can be restrained within narrower limits than that fixed by the Constitution of the United States upon the ground that they make contracts ruinous or injurious to themselves."

The Chief Justice proceeds to follow the principle he had stated to its consequences and it is the paragraph which we now extract which has a weighty power in this discussion.

He says: "It is equally clear upon the same principle, that the people of a State may by the form of government they adopt, confer on their public servants and representatives all the power and rights of sovereignty which they themselves possess; or may restrict them within such limits as they deemed best and safest for the public interest.

"They may confer on them power to charter banks or other companies, or accept a specified amount less than their fair share of the public burdens. This power may be indiscreetly and injudiciously exercised. Banks and other companies may be exempted, by contract for their equal share of taxes, under the belief that the corporation will prove a public benefit.

"Experience may prove it is a public injury. *Yet if the contract was within the scope of the authority conferred by the Constitution of the State, it is like any other contract made by competent authority, binding upon the parties.* Nor can the PEOPLE or their representatives by any act of *theirs afterwards, impair its obligation.*

"*When the contract is made the Constitution of the United States* acts upon it and declares that it shall not be impaired and makes it the duty of this Court to carry it into execution. That duty must be performed."

Ohio L. & T. Co. *vs.* Debolt, 16 How., 416–428–9.

JOHN A. CAMPBELL,
For Appellees.

APPENDIX.

I.

CHARTER OF THE LOUISIANA STATE LOTTERY COMPANY.

[No. 25.]

AN ACT

To Increase the Revenue of the State, and to authorize the Incorporation and Establishment of the Louisiana State Lottery Company, and to repeal certain Acts now in force.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened,* That whereas many millions of dollars have been withdrawn from and lost to this State by the sale of Havana, Kentucky, Madrid, and other lottery tickets, policies, combinations and devices, and fractional parts thereof, it shall hereafter be unlawful to sell, offer or expose for sale any of them, or any other lottery, policy or combination ticket or tickets, devices or certificates, or fractional parts thereof, except in such manner and by such persons, their heirs, executors and assigns, as shall be hereinafter authorized.

SEC. 2. *Be it further enacted, etc.,* That the following named persons, to wit: Robert Bloomer, Jesse R. Irwin, John Considine, Charles H. Murray, F. F. Wilder, C. T. Howard, Philip N. Luckett, be and they are hereby constituted and declared a corporation for the objects and purposes and with the powers and privileges hereinafter specified and set forth.

ARTICLES OF INCORPORATION.

ARTICLE 1. The name and title of this corporation shall be the Louisiana State Lottery Company, and the domicile thereof shall be in the City of New Orleans, State of Louisiana.

ART. 2. The objects and purposes of this corporation are: *First*, the protection of the State against the great losses heretofore incurred by sending large amounts of money to other States and foreign countries for the purchase of lottery tickets and devices, thereby impoverishing our own people.

Second—To establish a solvent and reliable home institution for the sale of lottery, policy, and combination tickets, devices, and certificates, fractional parts thereof, at terms and prices in just proportion to the prizes to be drawn, and to insure perfect fairness and justice in the distribution of such prizes.

Third—To provide means to raise a fund for educational and charitable purposes for the citizens of Louisiana.

ART. 3. The capital stock of this corporation shall be one million ($1,000,000) dollars, represented by ten thousand (10,000) shares of one hundred dollars each.

ART. 4. *Section* 1. The company shall have the right to commence operations when one hundred thousand ($100,000) dollars of the stock is subscribed and paid in.

Sec. 2. All power of the corporation shall be vested in a Board of Directors to consist of seven persons, each of whom shall own at least ten shares of the capital stock.

Sec. 3. The corporation shall have the right to sue and be sued, to plead and to be impleaded, and to appear in any court of justice, and to do any other lawful act such as any person or persons might do for their own defense, interest, and safety.

Sec. 4. The President of the Board of Directors shall be the proper person upon whom to serve citations, notices, and other legal process wherein this corporation may be interested.

ART. 5. *Section* 1. The corporation shall pay to the State of Louisiana the sum of forty thousand ($40,000) dollars per annum,

which sum shall be payable quarterly in advance from and after the first day of January, 1869, to the State Auditor, who shall deposit the same in the treasury of the State, and which sum shall be credited to the educational fund; and said corporation shall be exempt from all other taxes and licenses of any kind whatever, whether from State, parish, or municipal authorities.

Sec. 2. The corporation shall furnish bonds to the Auditor in the sum of fifty thousand dollars, as security for prompt and punctual payment of the sums set forth in the preceding section.

ART. 6. The Board of Directors shall have power to establish as many agencies as may be necessary, and to appoint a President, Superintendent, Secretary, Treasurer, and such clerks and agents as may be required, and may remove them at pleasure, fix the salaries of all officers and employes of the corporation, and the amount of the securities, and shall make and establish such rules and by-laws for the proper management and regulation of the affairs of the corporation as may be necessary and proper.

A majority of said Board shall be necessary to constitute a quorum, as also to elect or remove any officer or employe.

The Board shall have power to fill any vacancy that may occur by death or resignation.

ART. 7. Each stockholder at all meetings for the election of directors or for other purposes, shall be entitled directly or by proxy to cast one vote for each share of the capital stock held by him; all transfers of stock shall be made on the books of the corporation.

ART. 8. The aforesaid named persons in section second of this act shall be and are hereby constituted the first Board of Directors, who shall at their first meeting appoint one of their number President, and the said Board shall serve for two years from the first of January, 1869, and thereafter until their successors are elected and qualified; at the expiration of which time a meeting of the stockholders for the election of a Board of Directors shall be held and a day fixed for all elections thereafter.

A two-thirds vote shall be necessary to constitute an election, and if no election is had the meeting shall adjourn over for one year.

Sec. 3. *Be it further enacted, etc.*, That any person or persons selling or offering, or exposing for sale, after the thirty-first day of December, 1868, any lottery, policy, or combination tickets, devices, or certificates, or fractional parts thereof, in violation of this act, and of the rights and privileges herein granted to this corporation, shall be liable to said corporation in damages in a sum not exceeding five thousand nor less than one thousand dollars for each offense, recoverable by suit before any court of competent jurisdiction.

Sec. 4. *Be it further enacted, etc.*, That this corporation shall be and continue for and during the term of twenty-five years from the first day of January, 1869, for which time it shall have the sole and exclusive privilege of establishing and authorizing a lottery or series of lotteries, and selling and disposing of lottery tickets, policy, combination devices, and certificates and fractional parts thereof.

Sec. 5. *Be it further enacted, etc.*, That the said corporation shall also have the sole right and privilege, during the whole term of its existence as hereinbefore provided for, to dispose of by lottery or series of lotteries, any lands, improved or unimproved, which said corporation may become possessed of by purchase or otherwise.

Sec. 6. *Be it further enacted, etc.*, That at the expiration of this corporation three commissioners shall be elected by the stockholders, whose duty it shall be to liquidate its affairs on such terms and in such manner as shall be determined by a majority of stockholders voting.

Sec. 7. *Be it further enacted, etc.*, That the following acts be and the same are hereby repealed, viz: An act entitled an act to license the vending of lottery tickets, approved February 17, 1866; also, an act entitled an act to authorize the sale of stamps to vendors of lottery tickets, approved February 28, 1866; also an amendatory act entitled an act to amend section first of an act entitled an act to authorize the sale of stamps to vendors of lottery tickets, approved March 22, 1866, and all other laws or parts of laws inconsistent with or contrary to the provisions of this act, are hereby repealed.

Sec. 8. *Be it further enacted, etc.,* That this act shall take effect from and after its passage.

A true copy: GEORGE E. BOVEE,
Secretary of State.

II.

EXTRACTS:—CONSTITUTION OF LOUISIANA.

ART. 155. No ex post facto law, nor any law impairing the obligations of contracts, shall be passed, nor vested rights be divested, unless for purposes of public utility and for adequate compensation previously made.

ART. 167. The General Assembly shall have authority to grant lottery charters or privileges; *provided,* each charter or privilege shall pay not less than forty thousand dollars per annum in money into the treasury of the State; *and provided further,* that all charters shall cease and expire on the first of January, 1895, from which time all lotteries are prohibited in the State.

The forty thousand dollars per annum now provided by law to be paid by the Louisiana State Lottery Company, according to the provisions of its charter, granted in the year 1868, shall belong to the Charity Hospital of New Orleans, and the charter of said company is recognized as a contract binding on the State for the period therein specified, except its monopoly clause, which is hereby abrogated, and all laws contrary to the provisions of this article are hereby declared null and void; *provided,* said company shall file a written renunciation of all its monopoly features in the office of the Secretary of State within sixty days after the ratification of this constitution.

Of the additional sums raised by licenses on lotteries, the hospital at Shreveport shall receive ten thousand dollars annually, and the

remaining sum shall be divided each year among the several parishes in the State for the benefit of their schools.

ART. 202. The taxing power may be exercised by the General Assembly for State purposes, and by parishes and municipal corporations, under authority granted to them by the General Assembly, for parish and municipal purposes.

ART. 203. Taxation shall be equal and uniform throughout the territorial limits of the authority levying the tax, and all property shall be taxed in proportion to its value, to be ascertained as directed by law; *provided*, the assessment of all property shall never exceed the actual cash value thereof; *and provided further*, that the taxpayers shall have the right of testing the correctness of their assessments before the courts of justice. In order to arrive at this equality and uniformity the General Assembly shall, at its first session after the adoption of this constitution, provide a system of equality and uniformity in assessments, based upon the relative value of property in the different portions of the State. The valuation put upon property for the purposes of State taxation shall be taken as the proper valuation for purposes of local taxation in every sub-division of the State.

ART. 205. The power to tax corporations and corporate property shall never be surrendered nor suspended by act of the General Assembly.

ART. 206. The General Assembly may levy a license tax, and in such case shall graduate the amount of such tax to be collected from the persons pursuing the several trades, professions, vocations and callings. All persons, associations of persons and corporations pursuing any trade, profession, business or calling may be rendered liable to such tax, except clerks, laborers, clergymen, school teachers, those engaged in mechanical, agricultural, horticultural and mining pursuits, and manufacturers other than those of distilled alcoholic or malt liquors, tobacco and cigars, and cotton seed oil. No political corporation shall impose a greater license tax than is imposed by the General Assembly for State purposes.

ART. 257. The constitution of this State, adopted in 1868, and all amendments thereto, is declared to be superseded by this constitution, and in order to carry the same into effect, it is hereby declared and ordained as follows:

ART. 258. All rights, actions, prosecutions, claims and contracts, as well of individuals as of bodies corporate, and all laws in force at the time of the adoption of this constitution, and not inconsistent therewith, shall continue as if the said constitution had not been adopted. But the monopoly features in the charter of any corporation now existing in the State, save such as may be contained in the charters of railroad companies, are hereby abolished.

III.

EXTRACT FROM ACT No. 77, SESSION ACTS OF THE YEAR 1880.

SEC. 48. *Be it further enacted, etc.*, That no assessment shall hereafter be made under that name, as heretofore of the capital stock of any national bank, State bank, banking company, banking firm or banking association, or of any corporation, company, firm or association, whose capital stock is represented by shares, but the actual shares shall be assessed to the shareholders who appear as such upon the books, regardless of any transfer not registered or entered upon the books; and it shall be the duty of the president, or other proper officer, to furnish to the tax collector a complete list of those who are borne upon the books as shareholders; and all the taxes so assessed shall be paid by the bank, company, firm, association or corporation, which shall be entitled to collect the amounts from the shareholders or their transferees. All property owned by the bank, company, firm, association or corporation which is taxable under sections one and three of this act shall be assessed directly to

the bank, company, firm, association or corporation, and the *pro rata* of such direct property taxes, and of all exempt property, proportioned to each share of capital stock, shall be deducted from the amount of taxes assessed to that share under this section. The shares of stock of any railroad company, whose railroad track lies partly within this State and partly in another State or States, shall be assessed in this State in the ratio which the number of miles of its track, within this State, bears to the total number of miles of its track. Such assessments shall be made where the bank, etc., is located and not elsewhere, whether the shareholders reside there or not. Any president, or other officer, who shall refuse or fail to deliver said list to the tax collector, shall be guilty of a misdemeanor, and on conviction shall be punished by fine, or imprisonment or both, at the discretion of the court. No assessment shall be made of "capital employed in trade," under that name as heretofore, but all the property taxable under sections one and three of this act, owned by any person, association, firm or company, whose capital stock is not represented by shares, shall be assessed to said person, firm, association or company.

IV.

EXTRACTS FROM REVISED CIVIL CODE OF LOUISIANA.

ART. 427. [418.]—A corporation is an intellectual body, created by law, composed of individuals united under a common name, the members of which succeed each other, so that the body continues always the same, notwithstanding the change of the individuals which compose it, and which, for certain purposes, is considered as a natural person.

ART. 433. [424.]—Corporations legally established are substituted for persons, and their union which renders common to all those

who compose them, their interests, their rights and their privileges, is the reason why they are considered as one single whole. Hence it follows that they may possess an estate, and have a common treasury for the purpose of depositing their money; that they are capable of receiving legacies and donations; that they may make valid contracts, obligate others and obligate themselves towards others; exercise the rights which belong to them; manage their own affairs; appear in courts of justice, and even enact statutes and regulations for their own government, provided such statutes and regulations be not contrary to the laws of the political society of which they are members.

ART. 434. [425.]—The right of succession also is inherent to the nature of corporations; so that as long as they exist they transmit to their successors, their rights and their property.

The right of electing in the manner prescribed by law, new members in the stead of those who have ceased to be members of the corporation, is the right impliedly attached to the constitution of every regularly established corporation.

ART. 435. [426.]—Corporations are intellectual beings, different and distinct from all the persons who compose them.

ART. 436. [427.]—The estate and rights of a corporation belong so completely to the body, that none of the individuals who compose it, can dispose of any part of them.

In this respect the thing belonging to a body, is very different from a thing which is common to several individuals, as respects the share which every one has in the partnership which exists between them.

ART. 437. [428.]—According to the above rule, what is due to a corporation is not a due to any of the individuals who compose it, and *vice versa*.

A creditor of a corporation can not therefore compel any of the members thereof to pay what may be due to him by the corporation; he can demand his payment of the corporation only, through their president, syndic or attorney in fact, and he can seize no other effects

but such as belong to the corporation, provided the debt has been contracted by the corporation through their president, syndic, or attorney in fact; for if all the individuals who compose the corporation have signed the deed personally, every one of them may be compelled to make payment, either for his individual portion or *in solido*, when it has been stipulated expressly that the debt was contracted *in solido*.